

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA, THE)
STATE OF TENNESSEE, and THE STATE)
OF GEORGIA, *ex rel.* [UNDER SEAL],)

Plaintiff,)

v.)

[UNDER SEAL],)

Defendant.)

No. 1:08-CV-71

Collier / Lee

FILED UNDER SEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA, THE)	
STATE OF TENNESSEE, and THE STATE)	
GEORGIA, <i>ex rel.</i> THOMAS BINGHAM,)	
)	
Plaintiff,)	
)	No. 1:08-CV-71
v.)	
)	Collier / Lee
HCA, INC.,)	
)	<u>FILED UNDER SEAL</u>
Defendant.)	

ORDER

Before the court are two *ex parte* motions filed by the United States of America (“United States”) [Doc. 48; Doc. 50]. The first motion seeks an extension of time in which to determine whether to intervene in this *qui tam* action, during which time the complaint would remain under seal [Doc. 48]. *See* 31 U.S.C. § 3730(b)(3). This is the eighth extension of time requested by the United States in this matter, which was originally filed in March, 2008. The second motion seeks leave to partially lift the seal on the complaint in order to provide a redacted copy of the complaint (excluding the relator’s name) to HCA [Doc. 50]. The United States represents that the relator has no objection to either motion.

The Court granted the United States’ previous request for an extension in order to facilitate interviews of HCA employees. AUSA Elizabeth Tonkin states that several of those interviews have now been conducted and that several more are scheduled. She further states that the interviewees have agreed to produce additional records within the next 30 days and review of the documents will occur within two weeks of receipt. She states that the United States plans to meet with HCA’s

counsel no later than early June 2011 in order to discuss the investigation and the potential for resolution. The United States seeks to share a redacted version of the complaint with HCA to determine whether it will cooperate with the investigation before deciding whether to intervene.

The requested extension of time may be granted only for “good cause” shown. 31 U.S.C. § 3730(b)(3); Tenn. Code Ann. § 71-5-183(b)(3); *United States ex rel Dahlman v. Emergency Physicians Prof’l Ass’n*, 2004 WL 287559, at *1 (D. Minn. 2004). This “good cause” requirement is “a substantive one, which the government can only satisfy by stating a convincing rationale for continuing the seal.” *United States ex rel Costa v. Baker & Taylor, Inc.*, 955 F. Supp. 1188, 1190 (N.D. Cal. 1997). “Good cause” is not established “merely upon a showing that the [g]overnment was overburdened and had not had a chance to address the complaint.” *Id.* However, “a pending investigation of the allegations contained in the *qui tam* complaint will often establish ‘good cause’ for staying the civil action.” *Id.* It is not unprecedented for the United States to receive multiple extensions of time over the course of several years while conducting an investigation into the allegations of a *qui tam* complaint. *See United States ex rel Howard v. Lockheed Martin Corp.*, 2007 WL 1513999, at *1 (S.D. Ohio 2007).

Based on the declaration of AUSA Tonkin, the Court **FINDS** that the United States has shown good cause to extend the deadline for determining whether to intervene in this action until such time as the United States has met with HCA’s counsel to ascertain whether HCA will cooperate in resolving this matter. For the same reasons, the Court **FINDS** that the United States has good reason for a partial lift of the seal in order to share a redacted copy of the complaint with HCA. Accordingly, the motions for an extension of time and for a partial lift of the seal [Doc. 48; Doc. 50] are **GRANTED**. The United States may share a copy of the complaint that does not disclose

the relator's name in its meeting with HCA's counsel, and the deadline for the United States to intervene or decline this action is extended up to and including **July 7, 2011**.

SO ORDERED.

ENTER:

s/ Susan K. Lee
SUSAN K. LEE
UNITED STATES MAGISTRATE JUDGE